

during a given calendar year must report to BIS within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BIS on company letterhead at the address given in §716.6(d) of the CWCR, with the following notation: “AATTN: Report of Inspection-related Costs.”

§717.5 Post-inspection activities.

BIS will forward a copy of the final inspection report to the inspected facility for their review upon receipt from the OPCW. Facilities may submit comments on the final inspection report to BIS, and BIS will consider them, to the extent possible, when commenting on the final report. BIS will also send facilities a post-inspection letter detailing the issues that require follow-up action and the date on which the report on inspection-related costs (see §717.4 of the CWCR) is due to BIS.

PART 718—CONFIDENTIAL BUSINESS INFORMATION

Sec.

718.1 Definition.

718.2 Identification of confidential business information.

718.3 Disclosure of confidential business information.

SUPPLEMENT NO. 1 TO PART 718—CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

SOURCE: 71 FR 24929, Apr. 27, 2006, unless otherwise noted.

§718.1 Definition.

The Chemical Weapons Convention Implementation Act of 1998 (“the Act”) defines confidential business information as information included in categories specifically identified in sections 103(g)(1) and 304(e)(2) of the Act and other trade secrets as follows:

- (a) Financial data;
- (b) Sales and marketing data (other than shipment data);
- (c) Pricing data;
- (d) Personnel data;
- (e) Research data;
- (f) Patent data;
- (g) Data maintained for compliance with environmental or occupational health and safety regulations;
- (h) Data on personnel and vehicles entering and personnel and personal passenger vehicles exiting the site;
- (i) Any chemical structure;
- (j) Any plant design, process, technology or operating method;
- (k) Any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed or produced;
- (l) Any commercial sale, shipment or use of a chemical; or
- (m) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act), provided such trade secret is obtained from a U.S. person or through the U.S. Government.

718.2 Identification of confidential business information.

(a) *General.* Certain confidential business information submitted to BIS in declarations and reports does not need to be specifically identified and marked by the submitter, as described in paragraph (b) of this section. Other confidential business information submitted to BIS in declarations and reports and confidential business information provided to the Host Team during inspections must be identified by the inspected facility so that the Host Team can arrange appropriate marking and handling.

(b) *Confidential business information contained in declarations and reports.* (1) BIS has identified those data fields on the declaration and report forms that request “confidential business information” as defined by the Act. These data fields are identified in the table provided in Supplement No. 1 to this part.

(2) You must specifically identify in a cover letter submitted with your declaration or report any additional information on a declaration or report form (i.e., information not provided in one of

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the data fields listed in the table included in Supplement No. 1 to this part), including information provided in attachments to Form A or Form B, that you believe is confidential business information, as defined by the Act, and must describe how disclosure would likely result in competitive harm.

NOTE TO §718.2(b): BIS has also determined that descriptions of Schedule 1 facilities submitted with Initial Declarations as attachments to Form A contain confidential business information, as defined by the Act.

(c) *Confidential business information contained in advance notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. You must identify information in your advance notifications of Schedule 1 imports that you consider to be privileged and confidential, and describe how disclosure would likely result in competitive harm. See §718.3(b) of the CWC for provisions on disclosure to the public of such information by the U.S. Government.

(d) *Confidential business information related to inspections disclosed to, reported to, or otherwise acquired by, the U.S. Government.* (1) During inspections, certain confidential business information, as defined by the Act, may be disclosed to the Host Team. Facilities being inspected are responsible for identifying confidential business information to the Host Team, so that if it is disclosed to the Inspection Team, appropriate marking and handling can be arranged, in accordance with the provisions of the Convention (see §718.3(c)(1)(ii) of the CWC). Confidential business information not related to the purpose of an inspection or not necessary for the accomplishment of an inspection, as determined by the Host Team, may be removed from sight, shrouded, or otherwise not disclosed.

(2) Before or after inspections, confidential business information related to an inspection that is contained in any documents or that is reported to, or otherwise acquired by, the U.S. Government, such as facility information for pre-inspection briefings, facility agreements, and inspection reports, must be identified by the facility so

that it may be appropriately marked and handled. If the U.S. Government creates derivative documents from such documents or reported information, they will also be marked and handled as confidential business information.

§718.3 Disclosure of confidential business information.

(a) *General.* Confidentiality of information will be maintained by BIS consistent with the non-disclosure provisions of the Act, the Export Administration Regulations (15 CFR parts 730 through 774), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate.

(b) *Disclosure of confidential business information contained in advance notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. Disclosure of such information will be in accordance with the provisions of the relevant statutory and regulatory authorities as follows:

(1) *Exports of Schedule 1 chemicals.* Confidentiality of all information contained in these advance notifications will be maintained consistent with the non-disclosure provisions of the Export Administration Regulations (15 CFR parts 730 through 774), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate; and

(2) *Imports of Schedule 1 chemicals.* Confidentiality of information contained in these advance notifications will be maintained pursuant to applicable exemptions under the Freedom of Information Act.

(c) *Disclosure of confidential business information pursuant to §404(b) of the Act—(1) Disclosure to the Organization for the Prohibition of Chemical Weapons (OPCW).* (i) As provided by Section 404(b)(1) of the Act, the U.S. Government will disclose or otherwise provide confidential business information to the Technical Secretariat of the OPCW or to other States Parties to the Convention, in accordance with provisions

of the Convention, particularly with the provisions of the Annex on the Protection of Confidential Information (Confidentiality Annex).

(ii) *Convention provisions.* (A) The Convention provides that States Parties may designate information submitted to the Technical Secretariat as confidential, and requires the OPCW to limit access to, and prevent disclosure of, information so designated, except that the OPCW may disclose certain confidential information submitted in declarations to other States Parties if requested. The OPCW has developed a classification system whereby States Parties may designate the information they submit in their declarations as “restricted,” “protected,” or “highly protected,” depending on the sensitivity of the information. Other States Parties are obligated, under the Convention, to store and restrict access to information which they receive from the OPCW in accordance with the level of confidentiality established for that information.

(B) The OPCW Inspection Team members are prohibited, under the terms of their employment contracts and pursuant to the Confidentiality Annex of the Convention, from disclosing to any unauthorized persons, during their employment and for five years after termination of their employment, any confidential information coming to their knowledge or into their possession in the performance of their official duties.

(iii) *U.S. Government designation of information to the Technical Secretariat.* It is the policy of the U.S. Government to designate all facility information it provides to the Technical Secretariat in declarations, reports and Schedule 1 advance notifications as “protected.” It is the policy of the U.S. Government to designate confidential business information that it discloses to Inspection Teams during inspections as “protected” or “highly protected,” depending on the sensitivity of the information. The Technical Secretariat is responsible for storing and limiting access to any confidential business information contained in a document according to its established procedures.

(2) *Disclosure to Congress.* Section 404(b)(2) of the Act provides that the

U.S. Government must disclose confidential business information to any committee or subcommittee of Congress with appropriate jurisdiction upon the written request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, and no member and no staff member of such committee or subcommittee, may disclose such information or material except as otherwise required or authorized by law.

(3) *Disclosure to other Federal agencies for law enforcement actions and disclosure in enforcement proceedings under the Act.* Section 404(b)(3) of the Act provides that the U.S. Government must disclose confidential business information to other Federal agencies for enforcement of the Act or any other law, and must disclose such information when relevant in any proceeding under the Act. Disclosure will be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding. Section 719.14(b) of the CWCER provides that all hearings will be closed, unless the Administrative Law Judge for good cause shown determines otherwise. Section 719.20 of the CWCER provides that parties may request that the administrative law judge segregate and restrict access to confidential business information contained in material in the record of an enforcement proceeding.

(4) *Disclosure to the public; national interest determination.* Section 404(c) of the Act provides that confidential business information, as defined by the Act, that is in the possession of the U.S. Government, is exempt from public disclosure in response to a Freedom of Information Act request, except when such disclosure is determined to be in the national interest.

(i) *National interest determination.* The United States National Authority (USNA), in coordination with the CWC interagency group, shall determine on a case-by-case basis if disclosure of confidential business information in response to a Freedom of Information Act request is in the national interest.

(ii) *Notification of intent to disclose pursuant to a national interest determination.* The Act provides for notification

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to the affected person of intent to disclose confidential business information based on the national interest, unless such notification of intent to disclose is contrary to national security or law enforcement needs. If, after coordination with the agencies that constitute the CWC interagency group, the USNA does not determine that such notification of intent to disclose is contrary to national security or law enforcement needs, the USNA will notify the person that submitted the information and the person to whom the information pertains of the intent to disclose the information.

[71 FR 24929, Apr. 27, 2006, as amended at 73 FR 78183, Dec. 22, 2008]

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	Fields containing confidential business information
Schedule 1 Forms:	
Certification Form	NONE.
Form 1-1	NONE.
Form 1-2	All fields.
Form 1-2A	All fields.
Form 1-2B	All fields.
Form 1-3	All fields.
Form 1-4	All fields.
Schedule 2 Forms:	
Certification Form	NONE.
Form 2-1	NONE.
Form 2-2	Question 2-2.9
Form 2-3	All fields.
Form 2-3A	All fields.
Form 2-3B	All fields.
Form 2-3C	All fields.
Form 2-4	All fields.
Schedule 3 Forms:	
Certification Form	NONE.
Form 3-1	NONE.
Form 3-2	NONE.
Form 3-3	All fields.
Form 3-4	All fields.
Unscheduled Discrete Organic Chemicals Forms:	
Certification Form	NONE.
Form UDOC	NONE.

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	Fields containing confidential business information
FORMS A and B and attachments (all Schedules and UDOCs).	Case-by-case; must be identified by submitter.

*This table lists those data fields on the Declaration and Report Forms that request "confidential business information" (CBI) as defined by the Act (sections 103(g) and 304(e)(2)). As provided by section 404(a) of the Act, CBI is exempt from disclosure in response to a Freedom of Information Act (FOIA) request under sections 552(b)(3) and 552(b)(4) (5 U.S.C.A. 552(b)(3)-(4)), unless a determination is made, pursuant to section 404(c) of the Act, that such disclosure is in the national interest. Other FOIA exemptions to disclosure may also apply. You must identify CBI provided in Form A and/or Form B attachments, and provide the reasons supporting your claim of confidentiality, except that Schedule 1 facility technical descriptions submitted with initial declarations are always considered to include CBI. If you believe that information you are submitting in a data field marked "none" in the Table is CBI, as defined by the Act, you must identify the specific information and provide the reasons supporting your claim of confidentiality in a cover letter.

PART 719—ENFORCEMENT

Sec.

- 719.1 Scope and definitions.
- 719.2 Violations of the Act subject to administrative and criminal enforcement proceedings.
- 719.3 Violations of the IEEPA subject to judicial enforcement proceedings.
- 719.4 Violations and sanctions under the Act not subject to proceedings under the CWCR.
- 719.5 Initiation of administrative proceedings.
- 719.6 Request for hearing and answer.
- 719.7 Representation.
- 719.8 Filing and service of papers other than the NOVA.
- 719.9 Summary decision.
- 719.10 Discovery.
- 719.11 Subpoenas.
- 719.12 Matters protected against disclosure.
- 719.13 Prehearing conference.
- 719.14 Hearings.
- 719.15 Procedural stipulations.
- 719.16 Extension of time.
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- 719.18 Decisions.
- 719.19 Settlement.
- 719.20 Record for decision.
- 719.21 Payment of final assessment.
- 719.22 Reporting a violation.

AUTHORITY: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR 1994, Comp., p. 950; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

SOURCE: 71 FR 24929, Apr. 27, 2006, unless otherwise noted.

§ 719.1 Scope and definitions.

(a) *Scope.* This part 719 describes the various sanctions that apply to violations of the Act and the CWCR. It also